IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.321 OF 2007
WITH
CIVIL APPLICATION NO.637 OF 2007

Shri Manohar Ramchandra Karpe ..Appellant.
Vs.
Smt. Shakuntalabai Shantaram Karpe
& 11 Ors. ..Respondents.

Mr.G.S.Godbole, adv. for the Appellant.

CORAM : J.H.BHATIA, J.
DATE : SEPTEMBER 17, 2007.

P.C.:

1. Heard Mr.Godbole the leaned counsel for the appellant, who is the original plaintiff.

2. According to the plaintiff, defendant no.1 is his brother and defendant nos.4 and 5 are his sisters and defendant no.3 is their mother. Defendant no.2 Keshav is his step brother. Deceased Ramchandra was father of the plaintiff and defendant nos.1,2,4 and 5. This family was holding agricultural lands as well as house properties as ancestral joint family property. Plaintiff sought partition of the suit property and 1/5th share in the same. Defendant no.1, who was main contesting defendant, contended that partition of the joint family property had taken place sometimes prior to 1947. The plaintiff was born in 1949. The suit

property had come to the share of the defendants and, therefore, the plaintiff can not seek partition of that property and share in that property. Suit of the plaintiff was dismissed on the ground that the partition had taken place sometimes in the year 1945 while he himself was born in 1949 and therefore, he can not seek partition of the suit property, which had come to the share of the defendants. Appeal preferred by the plaintiff also came to be dismissed. The First Appellate Court found that the deceased Ramchandra had also made a will wherein he had recognised that a partition had taken place a long back. In that partition he had noted that the plaintiff Manohar had not received any property and therefore, he bequeathed the property, which had come to his share to the plaintiff Manohar. The learned appellate Court also noted that the plaintiff had also admitted that when he was born on 1-6-1949, his brothers Keshav, Muralidhar and Shantaram were already residing separately. Taking into consideration these facts and evidence, I find no fault in the concurrent findings of the Courts below that the partition had taken place prior to birth of plaintiff and, therefore, he can not claim any share in the property, which had come to the share of the defendants.

3. Mr.Godbole the learned counsel for the appellant

contended that in view of paragraph 310(2) of Hindu Law by Mulla, the plaintiff can seek re-opening of the partition if father had not reserved any share for himself. In fact, it was not the plea of the plaintiff that in the partition, which had taken place prior to his birth, his father had not reserved any share for himself and therefore, he could claim re-opening of the partition.

4. Taking into consideration the facts and the legal position, there is no substantial question of law involved in the present appeal.

5. Appeal stands dismissed summarily.

[J.H.BHATIA, J.]

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1. As the appeal itself has been dismissed, civil application does not survive and stands disposed off accordingly.

(J.H.BHATIA, J.)